

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

VITO ANTHONY HOMES & BUILDING COMPANY,

Plaintiff,
v.

Case Number 07-10425
Honorable David M. Lawson

BELLA HOMES, INC., a Michigan corporation,
BELLA REAL ESTATE HOLDINGS, INC., a Michigan
corporation, DON SPENCER, TIMOTHY FARRIS,
individually and doing business as TMF ASSOCIATES,
MICHAEL GRAHAM and NANCY RECCHIA,

Defendants.

**ORDER STRIKING REPLY BRIEF AND AFFIDAVIT, AND DIRECTING CLERK TO
REMOVE IMAGES FROM DOCKET**

On April 13, 2007, defendants Graham and Recchia filed a motion to dismiss the claims against them pursuant to Federal Rule of Civil Procedure 12(b)(6). The parties stipulated to extend the time for the plaintiff to respond to the motion, and the plaintiff filed its response on May 11, 2007. The defendants filed a reply brief and an affidavit on May 29, 2007.

According to the local rules, a reply brief “must be filed within 7 days after service of the response.” LR 7.1(d)(1)(C). Federal Rule of Civil Procedure 6, which governs the computation of time prescribed “by the local rules of any district court,” excludes weekends and holidays from computation of deadlines “[w]hen the period of time prescribed or allowed is less than 11 days.” Fed. R. Civ. P. 6(a). In addition, Rule 6 requires that a party be given an additional three days when service is performed electronically. Fed. R. Civ. P. 6(e); 5(b)(2)(D). Based on the rules governing computation of time, defendants Graham and Recchia had until May 25, 2007 to file a reply to the plaintiff’s response. However, the defendants did not file their reply brief until May 29, 2007. Nor did the defendants seek an enlargement of time or relief from the local rules, with which they should

be familiar. The reply brief and the accompanying affidavit are untimely and will be stricken.

Accordingly, it is **ORDERED** that defendants Graham and Recchia's reply brief and accompanying affidavit [dkt ## 37, 38] are **STRICKEN**.

It is further **ORDERED** that the clerk's office is directed to remove the images of the reply and the accompanying affidavit [dkt ## 37, 38] from the docket.

s/David M. Lawson

DAVID M. LAWSON

United States District Judge

Dated: May 31, 2007

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on May 31, 2007.

s/Felicia M. Moses

FELICIA M. MOSES